

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

United States of America,)	
)	
Plaintiff,)	
)	
vs.)	File No. 1:19-cr-86
)	
Rode Wayne Vocu,)	
)	
Defendant.)	

TRANSCRIPT OF SENTENCING

Taken at
United States Courthouse
Bismarck, North Dakota
December 9, 2019

BEFORE THE HONORABLE DANIEL L. HOVLAND
-- UNITED STATES DISTRICT COURT JUDGE --

APPEARANCES

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FOR THE UNITED STATES

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FOR THE DEFENDANT

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1 (The above-entitled matter came before the Court, The
2 Honorable Daniel L. Hovland, United States District Court
3 Judge, presiding, commencing at 9:03 a.m., Monday, December 9,
4 2019, in the United States Courthouse, Bismarck, North Dakota.
5 The following proceedings were had and made of record in open
6 court with the defendant present.)

7 - - - - -

8 THE COURT: We'll open the record in the case of
9 United States versus Rode Vodu. Is that how you pronounce it?

10 THE DEFENDANT: Yes.

1 MR. BELLMORE: No, Your Honor.

2 THE COURT: Mr. Rocu (sic), did you -- or Vocu, I
3 should say, did you have an opportunity to read the Presentence
4 Investigation Report?

09:04 5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: And you've talked to your attorney about
7 that report and what it means for you?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Either counsel have any objections to the
10 facts contained in that report or the guideline calculations?

11 MR. O'KONEK: No, Your Honor.

12 MR. BELLMORE: No, Your Honor.

13 THE COURT: Are there any witnesses that wish to
14 testify this morning?

09:04 15 MR. O'KONEK: Yes, Your Honor. We have one witness.

16 THE COURT: Mr. Bellmore, do you have any?

17 MR. BELLMORE: No, Your Honor.

18 THE COURT: All right. Mr. O'Konek, you may call the
19 witness.

09:04 20 MR. O'KONEK: United States would call Karen Boyd
21 Hartman.

22 THE COURT: We won't have her sworn in. She can just
23 take a seat in the witness stand. Once you get comfortable
24 there, ma'am, we'll have Mr. O'Konek ask you questions. But
09:05 25 could you spell your full name for the court reporter, please?

1 MS. HARTMAN: K-a-r-e-n, B-o-y-d, H-a-r-t-m-a-n.

2 THE COURT: Thank you.

3 MR. O'KONEK: Ms. Hartman, thank you for testifying
4 here today. I just have a few questions. Can you just please
09:05 5 take us through your background with the Memorial Church? I
6 guess, where did you grow up first?

7 MS. HARTMAN: I started out in Mandaree after the --
8 our home was flooded in Elbowoods. My parents worked for the
9 BIA, and we lived in Mandaree for a couple of years, until the
09:06 10 homes got relocated in New Town and New Town was established
11 and then moved to New Town, where I grew up and graduated from
12 high school there.

13 MR. O'KONEK: Ma'am, I know you have a letter you
14 wanted to read to the Court, but could you briefly just
09:06 15 describe to the Court your relationship with the Memorial
16 Church.

17 MS. HARTMAN: Well, my mother and father and my older
18 sisters -- two older sisters attended church there in
19 Elbowoods, and so basically my memories are pictures and
09:07 20 stories of the church and the events that were held there.

21 My grandfather was a lifelong friend of Reverend
22 Case, and he was also a -- I don't know. I guess nowadays they
23 would be -- call it a deacon maybe, but he went with Reverend
24 Case and -- to a lot of homes and introduced him to a lot of
09:07 25 people. And then my grandfather also had a large family of

1 girls and a couple of sons, who one son, he sang with him in
2 the church.

09:08 3 And then my mother and a lot of her sisters played
4 piano in the church, and -- and it was just -- there was no
5 question. I mean, you went to church, and that was it, and
6 that's how we were -- that's how we grew up. That's how I grew
7 up. I mean, there -- there, it was just assumed that you would
8 get ready on Sunday morning and go to church.

09:08 9 And when we moved into New Town, we started attending
10 the United Church of Christ, which is also part of the
11 congregational church system, and then went to -- out to the
12 Memorial Church for different events like weddings and our
13 annual church service that we -- that the congregational
14 churches would get together for. And I remember the old white
09:09 15 canvas tents being set up where a lot of the parishioners from
16 all the various seven churches would camp for the weekend for
17 the church services and then one big human church service
18 culminating the event.

09:09 19 And -- and it just -- as different churches were
20 established in the different communities, the events at the
21 Memorial Church got less and less, and -- but we still had
22 sunrise services there and weddings and different events until
23 it got to be too dangerous with the inside falling apart and
24 being vandalized. And we still had events there, but we had
09:10 25 them on the east side of the church, where there would be --

1 they'd haul chairs out and tables out, and we'd have church
2 services there, and --

3 MR. O'KONEK: Ma'am, did it have a place of
4 significance for you in the community?

09:06

5 MS. HARTMAN: well, not only for me, but for my
6 family and probably a lot of the older -- older people.

7 MR. O'KONEK: Ma'am, I know you had written a letter.
8 I want you to be able to read that for the Court, so please
9 feel free to take your time.

09:06

10 MS. HARTMAN: Okay. I addressed it to Ms. Lang.
11 Memories -- I don't even know if I can. Memories etched in a
12 person's mind are repeated over and over like they happened
13 yesterday. It has to be because the shock is a memory of a
14 genuine heart-felt loss, the devastation to your present world,
15 and denial of refusing to think of the events -- effects it
16 will have on the future.

09:11

17 I remember watching TV with my grandfather, Jefferson
18 B. Smith, when President John F. Kennedy was assassinated. I
19 remember listening to the radio the night Robert F. Kennedy was
20 assassinated. The day the Memorial Church was burned down is
21 now one of those memories that will be forever etched in my
22 mind.

09:11

23 I was cleaning and packing and making arrangements to
24 fly to Kansas when I received a text on Monday, April 22, 2019,
25 that was a copy of a Facebook message. I've never been or ever

09:11

09:12

1 will be on Facebook. With no indication of what it was going
2 to be, I recognized the name, so I had no worries it was a scam
3 or a prank. There are no words to express the overwhelming
4 shock and grief I felt when I opened it and saw the church
5 burning. My heart pounded. My tears rolled. I couldn't
6 comprehend this belief of what was happening.

09:12

7 I told my daughter I was driving out there, and she
8 stopped by with my grandson, who met me on the steps and just
9 wrapped his arms around me as I wept. I immediately drove to
10 the site, shook up and tearful. I could see smoke billowing
11 skyward as I approached from miles away. Two other cars were
12 parked there, and I got out and couldn't contain my grief.
13 There are no words to express the sight of this loss upon
14 seeing the wreckage of what was left of our church.

09:12

15 The church has been in our family since before
16 Elbowoods was flooded. I wasn't born yet, but I have seen
17 many, many pictures of family events being held there. My
18 grandfather, Jefferson B. Smith, was a prominent parishioner, a
19 protege and a lifelong friend of the Reverend Harold W. Case,
20 the second missionary there who was instrumental in building --
21 in the building of the Memorial Church. He took his family to
22 church every Sunday and insisted his daughters take piano
23 lessons and his eldest son sing so they could help with the
24 services.

09:13

09:13

25 while located in Elbowoods, it became the hub of

09:14

1 activity for the community. After being relocated to its
2 present site, I remember church services and weddings and other
3 events. I remember stopping there with my mother as she
4 reminisced. I remember seeing a portrait of Poor Wolf hanging
5 downstairs, but was missing the next time we stopped there.
6 Due to structural concerns during the eighties, we no longer
7 attempted to use the sanctuary for services.

09:14

8 Since we live in New Town, my family attends the
9 United Church of Christ, a member of the Fort Berthold Council
10 of Congregational Churches, an alliance of five to seven
11 churches of which the reestablished Parshall Memorial Church is
12 also a member. We held services at the Memorial Church site
13 outside, along the east side during the late summer, and the
14 sunrise service Easter morning for many years. Needless to
15 say, our alliance hasn't met for services, but it has instead
16 met to decide what to do with the ruins.

09:14

09:15

17 Many of my family members, my grandparents, my aunts
18 and uncles and cousins are buried in the church cemetery. The
19 cemetery will continue to be a part of many families' final
20 resting place for their loved ones, and I'm sure that we will
21 once again hold services there. Those of us still a part of
22 the legacy of the Memorial Church and the Fort Berthold Council
23 of Congregational Churches will make sure our memories will
24 continue to live on.

09:15

25 To this day the grief and sadness is immeasurable.

09:15

1 when I see pictures of the past and now what it looks like
2 today, my heart bleeds with sorrow. The only blessing is that
3 my ancestors and those who have recently passed away, my mother
4 and two sisters, are no longer here to have to withstand the
5 loss they would most certainly have in their hearts. It would
6 be seen as another traumatic experience to add to the loss they
7 felt when they were removed from the bottomlands and relocated
8 to what is now the present-day Fort Berthold Indian
9 Reservation.

09:16

10 I can only hope that the young man responsible for
11 this devastating loss will some day have the empathy and regret
12 to realize and understand what the effect this had on the
13 elders and the community ties this church represented to so
14 many families.

09:16

15 Enclosed is a copy of the book my sister, Juanita
16 Helphrey, who passed away in 2018, wrote in 2011 entitled "Our
17 Churches, Our Story." It has a section dedicated to the memory
18 of the Susan Webb Hall Memorial Congregational Church and now
19 called the Memorial Church upon its relocation. She has such a
20 better history of the church than I can describe in only a few
21 paragraphs.

09:16

22 Sincerely and with a sad heart, Karen Boyd Hartman.

09:17

23 MR. O'KONEK: And, ma'am, the last question I have
24 for you is, you mentioned that there would be a potential
25 memorial for the church. Are there any plans to erect any sort

1 of monument in its place?

2 MS. HARTMAN: I think the first meeting was in early
3 June, where we started with all -- all of the churches were
4 invited to decide what to do, and right now they're talking
5 about a memorial, a monument of some kind for sure. I don't
6 know if they're going to -- there's been a lot of ideas thrown
7 around about what to do and -- ranging from an amphitheater to
8 a picnic area and maybe an altar, but nothing that I know of
9 that's been for sure.

10 MR. O'KONEK: And as of today, has there been a
11 restitution figure for any sort of a monument? Has that been
12 established yet, or are people still working on that number?

13 MS. HARTMAN: I think they're still working on it,
14 although there's probably -- there was a meeting that I didn't
15 attend, I think. I can't remember when it was that I wasn't
16 able to go to, so I don't know if -- what new information was
17 shared. But there are people from the other Northern Plains
18 Conference, which is the Congregational Church of -- or United
19 Church of Christ, interested and attending our meetings from
20 Bismarck and all over to help us decide what to do and what
21 route to go.

22 MR. O'KONEK: And, ma'am, the last question I have
23 for you, is there anything else that you wanted to tell the
24 Court about how this has affected you or the Fort Berthold
25 community, specifically the congregation that you're a part of?

09:19

09:19

09:20

09:20

09:20

1 MS. HARTMAN: Well, I didn't address any kind of --
2 any kind of sentencing or anything in my letter. I would just
3 hope that the young man understands what a devastating loss it
4 is to the elders. A lot of the parishioners are older than me,
5 and they were so affected by the loss of their bottomlands that
6 they just see this as another loss to their hearts and their --
7 and their lives, and I hope that one day he understands the
8 hurt that he caused a lot of our elders, to have to rehash this
9 all over again after having moved -- having been forced to
10 leave their homes.

11 I hope that one day he understands and regrets and
12 has sympathy and empathy for what he did. And in the end, I
13 know a lot of the elders have forgiven him, and I hope that one
14 day he can forgive himself after he understands and accepts the
15 loss that he caused.

16 MR. O'KONEK: Yes, ma'am. Thank you for your
17 testimony. I have no further questions, Your Honor.

18 THE COURT: Mr. Bellmore, any questions?

19 MR. BELLMORE: No. Thank you, Your Honor.

20 THE COURT: All right. Thank you, Ms. Hartman. You
21 may step down.

22 MR. O'KONEK: And, Your Honor, the United States does
23 not have any further witnesses.

24 THE COURT: All right. So I'll give both attorneys
25 an opportunity to outline their recommendations. Mr. Vocu,

1 when the attorneys are done, I'll give you a chance to speak.
2 If there's anything you would like to say, you have the same
3 right as the attorneys to speak. Mr. O'Konek.

09:21 4 MR. O'KONEK: Thank you, Your Honor. In this case
5 we're dealing with a final offense level of 17 and a criminal
6 history category of II, which establishes a guideline range of
7 30 to 37 months.

8 THE COURT: Three, isn't it?

09:21 9 MR. O'KONEK: I believe it was -- the guideline range
10 is 30 to 37 months. That is the -- established by the --

11 THE COURT: Right, with a Criminal History Category
12 III.

13 MR. O'KONEK: I might have put down II. It's likely
14 a III, yes, Your Honor. And we're dealing in this case with a
09:21 15 binding Plea Agreement of a 30-month binding sentence.

16 However, the defense is able to ask for additional credit from
17 that binding sentence for the time that the defendant spent in
18 a residential re-entry center placement.

09:21 19 In this case the United States is requesting a
20 sentence of 30 months imprisonment, a three-year period of
21 supervised release, and payment of a hundred dollar special
22 assessment.

09:22 23 Pursuant to 18 United States Code, 3664 Delta 5,
24 we're asking that the Court keep restitution open for a period
25 of 90 days, which is permitted by statute. That is simply to

09:22

1 give the congregation of the -- the church group out in Fort
2 Berthold time to determine the amount of restitution for any
3 sort of monument or memorial placed at the site in Fort
4 Berthold for this -- this tragic event, for the church now lays
5 in ruin.

09:22

6 The reason for the sentence of 30 months is
7 appropriate is that the defendant committed the crime of arson,
8 and more importantly he set fire to the Memorial Congregational
9 Church in White Shield, on Fort Berthold Indian Reservation.
10 And although the church was in a -- I'll call a semiretirement
11 status, members of the Fort Berthold community still used it
12 for weddings, funerals, ceremonial services. Individuals were
13 still buried at the location.

09:23

14 And it served not only as a house of worship, a house
15 of God, but also as a beacon of light for members of the
16 community, specifically elders who had lived through the
17 removal with the Garrison Dam to Elbowoods -- from Elbowoods, I
18 should say, to New Town, and it's illustrated by Ms. Hartman
19 and as a specific significance not only to her, but to the
20 community. It holds religious, cultural, historic significance
21 and is a beacon of light to think about the past, the future,
22 and the community as a whole.

09:23

09:23

23 And the defendant's reckless actions removed that
24 beacon from the community, and there's nothing that can bring
25 that symbol back.

1 And we're asking for the 90 days to keep restitution
2 open to hopefully get a number for the dollar amount for
3 restitution so that the tribe can put some sort of memorial
4 together to recognize the loss, so they can get closure.

09:24

5 And that's why we're requesting not only that, but a
6 sentence per the binding terms of the Plea Agreement of
7 30 months imprisonment, a period of three years supervision,
8 and payment of the hundred dollars special assessment, Your
9 Honor.

09:24

10 THE COURT: All right. Thank you. Mr. Bellmore.

11 MR. BELLMORE: Thank you, Your Honor. Rode Vocu is
12 23 years old. He's from New Town. Once this matter is put
13 behind him, Your Honor, it's his intention to return there.

09:24

14 He was granted a modification to his release terms on
15 December 1st so that he could leave the halfway house at Centre
16 and live with his mother for the last few days before the
17 sentencing hearing today. He was allowed to do that because he
18 had earned his way.

09:24

19 Once he was released from custody, he was placed at
20 Centre. Shortly thereafter we had a change of plea hearing,
21 and there were some minor infractions, so to speak, regarding
22 his term of pretrial release. He had gained employment and had
23 lost it quickly. He had had some difficulties, it was
24 reported, with his attitude at Centre. The Court addressed
25 that with Rode and allowed him to continue on pretrial release

09:25

1 after the change of plea hearing, where he has turned it
2 around.

09:25 3 I think the Court has received a pretrial status
4 report this morning that indicates that since that time, Rode
5 has done very well, and that is why he was allowed the
6 opportunity to leave the halfway house and spend some time with
7 his family back in New Town prior to today.

09:25 8 while he was at the halfway house, subject to the
9 same strict rules that everyone is, he was able to find another
10 job, which he maintained and worked nearly full-time, 40 hours,
11 up until he was permitted to go home, so I think he has
12 demonstrated his ability to succeed while on supervision and
13 took every opportunity he could to demonstrate that in the
14 months leading up to today's hearing.

09:26 15 Rode signed a Plea Agreement, went through the change
16 of plea process, went through the PSR interview, and each
17 instance has accepted responsibility for what took place.

09:26 18 Unfortunately, Rode had struggled with mental health
19 issues, combined with controlled substances. That amounted to
20 what happened on the day -- what happened with the instant
21 offense.

09:26 22 Fortunately because of the circumstances surrounding
23 his use and being under the influence at the time of the
24 offense, he can't recall with particularity what exactly took
25 place, although he understands looking back on it, having

1 reviewed the discovery, that he was responsible and wanted to
2 take responsibility for that and has done so.

09:26 3 The Plea Agreement, as Mr. O'Konek indicated, is
4 binding on the Court. It is essentially a guideline sentence
5 of 30 months, and the only exception to that was the ability
6 for the Court to consider some credit that the Court ordinarily
7 would give to defendants while on pretrial release.

09:27 8 And here we have two areas that I'd ask the Court to
9 consider in imposing a 30-month sentence prior to giving
10 Mr. Vocu some credit for that, and that would be, first, the
11 tribal arrest. The PSR indicates on paragraph 45, Rode was
12 arrested on April 22nd. He was charged with arson and criminal
13 mischief. Those charges are pending, and that time is,
14 therefore, undischarged. That would be from -- excuse me, from
09:27 15 April 22nd until he was federally arrested on June 5, 2019. I
16 count that as 45 days or a month-and-a-half.

09:27 17 He spent some time in pretrial detention. He went
18 through a bond interview and a detention hearing and was placed
19 on a halfway house waiting list. That took about a month to
20 seven days. BOP will calculate that exactly.

09:28 21 Important here, however, is that he was released to
22 Centre on July 12th of this year and remained there, as I
23 mentioned, until December 1st, when he was allowed to go home.
24 I calculate that to be 143 days or four months and 20 days, so
25 calculating --

1 THE COURT: So why should I give him credit for all
2 of that when he wasn't on the best of behaviors during that
3 entire timeframe?

09:28 4 MR. BELLMORE: As I mentioned, there was -- there was
5 a couple of incidents. They didn't result in a petition being
6 filed. They were kind of attitude concerns, and he had -- I
7 think that translated over to his employment. If the Court may
8 remember, he was working at Culver's for a short period of
9 time, and he had never held a job, I think, that required that
09:28 10 kind of pace, and they --

11 THE COURT: Pace at Culver's?

12 MR. BELLMORE: Yeah, I think they're a pretty busy
13 place, and when he's on the food line, Your Honor, I think
14 that's a -- that's kind of a wake-up call. And they didn't
09:28 15 have any patience for Mr. Rode, and unfortunately he didn't
16 last too long there, but he found a job at Burger King and
17 really turned it around.

18 I don't think pretrial services would have allowed
19 him to go home, outside of that, you know, restricted
09:29 20 environment at a halfway house that Centre provides if he
21 hadn't done well, and done well for a large -- a long period of
22 time. I know that the box checks "noncompliance" on there, but
23 it's really that narrow window right when he was transitioning
24 from custody to the halfway house there were some bumps along
09:29 25 the way, but I think overall he has done well.

09:29

1 And I would note on there too, I think the status
2 report indicates that the pretrial services would go so far as
3 to recommend that he voluntarily surrender, if that was an
4 option. I think that indicates that overall his time at Centre
5 on pretrial release has been successful.

09:29

6 It has been a wake-up call for him, and again, he has
7 taken advantage of the opportunity to be released, and that
8 compared to other defendants and the Court's position on
9 crediting that, I think that Rode should be given time for
10 that.

09:30

11 So with the month-and-a-half as the tribal time and
12 four-and-a-half months at Centre, I calculate that to be six
13 months, and so -- and pursuant with the Plea Agreement -- the
14 binding Plea Agreement allows the Court to consider a sentence
15 of 24 months, and we'd ask --

09:30

16 THE COURT: Well, it doesn't say anything in the Plea
17 Agreement about getting him credit for time spent in tribal
18 court custody. It says nothing about that. I read it over
19 before the hearing.

09:31

20 MR. BELLMORE: That would be 143 days, Your Honor, at
21 the -- as the halfway house time, and I would still note that
22 the tribal time was 45 days.

23 Going forward, as I mentioned, Rode intends to return
24 to New Town. He knows the process of what's going to happen,
25 the steps that'll have to be taken, that he might be and

1 hopefully is afforded the opportunity for early release to get
2 back on his feet, to transition out of his prison sentence, to
3 go back to a halfway house and work.

09:31 4 If not, he understands that -- if he's not afforded
5 early release opportunity by BOP, it might be a condition of
6 his terms of supervised release, so he understands what's
7 headed for him. Midterm, long-term goals for him, however, are
8 to return to New Town to live with his -- his family. I would
9 ask the Court to consider --

09:31 10 THE COURT: And do what for work and schooling, or --

11 MR. BELLMORE: It's unclear right now, Your Honor.
12 He's going to have some time to kind of work through that,
13 hopefully some programming and some educational and vocational
14 opportunities at BOP for him. He's, you know, going to have to
09:31 15 -- I think the PSR is -- where I would agree, he's going to
16 have to take some time to figure that out. He's 23 years old,
17 and he's at that point in his life where he's going to have to
18 kind of think long-term as far as career-wise and making money
19 and providing for himself.

09:32 20 You know, with his history and -- and growing up, I
21 think this was -- this was the first step of that, and getting
22 out and holding that job at Burger King and the first time
23 really working in that kind of environment full-time was the
24 first step. And so he's got that experience to kind of see if
09:32 25 that's something he wants to pursue or if there's something

1 else he'd be interested in.

2 He'll be able to have some opportunities, hopefully,
3 at BOP, and so I'd ask the Court to consider in its judgment
4 recommending to BOP that he be allowed to serve the remainder
5 of his sentence at Sandstone, Minnesota, or Oxford, Wisconsin,
6 based on their proximity to North Dakota.

7 As far as restitution, I think that it was understood
8 by the parties leading up to this that, you know,
9 unfortunately, there's -- there's obvious sentimental value to
10 this structure, to this church. But the monetary value of
11 replacing it or fixing the damage, there isn't any information
12 on that because there wasn't anything to provide.

13 This was a building that Ms. Hartman indicated was
14 already vandalized from the inside-out, and to construct a
15 memorial, you know, and -- and ordering that as restitution, I
16 don't think that's in the -- that is restitution amount.

17 Restitution amount is the money for the damages.
18 It's based on an appraisal. It's based on an investigation of
19 what was lost, and the -- to pay for a structure would be
20 something that, you know, Rode could consider out of his heart
21 and as a part of moving on and giving back to his community,
22 but I don't think that that is a restitution issue for the
23 Court to consider.

24 And I don't believe that there is a restitution
25 amount just based on the circumstances of this case, that this

1 was a church that, unfortunately, has been completely destroyed
2 based on the instant offense, but was already heavily
3 vandalized and damaged from the inside-out. It just wasn't
4 worth anything as far as dollars are concerned.

09:34

5 But I'm not trying to downplay any sentimental value
6 that the church had on Ms. Hartman, her congregation or the
7 community. I just don't think this is a restitution amount
8 that's appropriate for the Court, so I'll leave it at that,
9 Your Honor, and ask the Court to close the matter of
10 restitution today.

09:34

11 THE COURT: Anything else?

12 MR. BELLMORE: I have nothing else, Your Honor.

13 THE COURT: Mr. O'Konek, what is your and the
14 government's position on time spent in tribal court custody,
15 which is not addressed in the Plea Agreement, time spent at
16 Centre, Inc.?

09:34

17 MR. O'KONEK: Yes, Your Honor. The tribal custody,
18 we believe, is outside the scope of the Plea Agreement. The
19 language says residential re-entry center or a halfway house.

09:34

20 In terms of that, the United States normally would
21 join the defense in making a recommendation for credit. In
22 this case I believe the Court articulated one of the concerns
23 that the United States has, which is the defendant's
24 noncompliance with certain conditions of release.

09:35

25 I guess I'll say as much just -- just to say that

1 we'll leave that up to the Court to determine whether or not --
2 if the Court feels that it's something that it should give to
3 the defendant.

09:35 4 I would note that this is the second time the
5 defendant has been in federal court. And a situation like
6 this, where he has committed arson upon a church, is a very
7 serious offense. And given his noncompliance at least at the
8 early term of his pretrial release, I believe that that weighs
9 against him receiving the credit, but ultimately we'll leave
09:35 10 that issue up to the Court.

11 MR. BELLMORE: Your Honor, based on the government's
12 position, at least his tribal time is concerned, given the Plea
13 Agreement, I would withdraw that request, but still ask the
14 Court to give Mr. Vocu credit for time spent at Centre, Inc.,
09:35 15 in Mandan pending sentencing.

16 THE COURT: All right. So, Mr. Vocu -- is it Vocu?

17 THE DEFENDANT: Yeah, it's Vocu.

18 THE COURT: Vocu. Okay. I need to give you the same
19 opportunity to speak as everyone else has had, so if you wish
09:36 20 to say anything or you have any questions, you're free to speak
21 as well.

22 THE DEFENDANT: Yeah. Like I don't really know how I
23 wasn't compliant. I passed every drug test. I like may have
24 slept in a few times. I don't think I ever argued with staff,
09:36 25 or anything. I don't really get how I was not compliant.

1 Giving like --

2 THE COURT: What about refusing to attend treatment
3 on September 2, 2019?

09:36 4 THE DEFENDANT: I didn't refuse. Like even my case
5 manager at Centre, she -- she thought that like -- I had a
6 meeting with my PO and my case manager, and we both thought --
7 and my PO said it was like up to me if I wanted to go to
8 treatment. And I was really like not -- I was really like sad,
9 or whatever, about being like locked up, so I just wanted to
09:36 10 sleep all day, and I didn't really want stuff to do, so I just
11 never went.

12 And then I like -- I thought I didn't have to go, and
13 even my case manager thought I didn't have to go until Bobby
14 came to Centre and told me I had to go, so then I went. And
09:37 15 then I just said, "I don't really think I need treatment"
16 during my evaluation, and then they said no and -- or they said
17 all right, and then I didn't know that I had to go.

18 And then when I found out I was supposed to go, then
19 I went, and then I finished treatment. I graduated, and I was
09:37 20 -- I didn't like -- it's not like I was like, "I don't want to
21 go to treatment." I just thought she gave me the option to go.

22 THE COURT: All right.

23 THE DEFENDANT: Yeah. And then like with Culver's, I
24 didn't like mean to get fired. Like I only worked there for
09:37 25 like two days.

1 THE COURT: well, most people don't mean to get
2 fired, but --

3 THE DEFENDANT: Yeah, I just -- like I only worked
4 there two days, and I never really like flipped patties, and
09:37 5 stuff, super-duper quick, so, I mean, I just -- the lady was
6 like, "You're not -- you're too slow," and -- I don't know. It
7 was just like -- I wasn't trying to be super slow, or anything.

8 And I don't really -- I'm just saying like I don't
9 get how I wasn't compliant, because like if you -- like what
09:38 10 Mr. Bellmore said, like if I wasn't compliant, why did they let
11 me go home for a week? Like I don't know.

12 THE COURT: I don't know either.

13 THE DEFENDANT: Yeah, like I didn't have anything to
14 elaborate on like other than -- I mean, because I graduated
09:38 15 treatment too, so it's like -- I don't know. Because like even
16 you told me if I did good, I would most likely get the time
17 served, or whatever, so I tried to be on my best behavior.
18 Like I haven't done no drugs, or anything, or -- I like
19 overslept a lot on some stuff, but that's like --

09:38 20 THE COURT: why do you oversleep?

21 THE DEFENDANT: I don't know. It was just like -- I
22 mean, like, you know, I was supposed to go job hunting like my
23 first few weeks there. I'd sleep all day. I don't know. I
24 felt sick, and stuff.

09:38 25 THE COURT: Felt sick?

1 THE DEFENDANT: Yeah. I don't know. If you've ever
2 been like super-duper sad, you get sick. I don't know -- or
3 not sick. I mean, if you're ever tired, just drowsy like --

4 THE COURT: All right.

09:38 5 THE DEFENDANT: I don't know.

6 THE COURT: So then these last few months you've been
7 working at Burger --

8 THE DEFENDANT: Burger King, yeah.

9 THE COURT: -- King?

10 THE DEFENDANT: Yeah.

11 THE COURT: What do you do there?

12 THE DEFENDANT: Well, it's like easier. I don't have
13 to flip patties, or anything. It's just, you know, a machine.
14 Put them in the machine and --

09:39 15 THE COURT: Oh, they have a hamburger press of some
16 sort?

17 THE DEFENDANT: Yeah, they got a charbroil thing.
18 Just put them in there and then -- yeah.

19 THE COURT: What do they pay you for that work?

09:39 20 THE DEFENDANT: The same -- or I think it was like a
21 dollar more than Culver's. I mean, it was 11 an hour.

22 THE COURT: Eleven dollars an hour?

23 THE DEFENDANT: Yeah.

24 THE COURT: Really?

09:39 25 THE DEFENDANT: Yeah.

1 THE COURT: I might have to find a part-time job.
2 And how many hours a week?

3 THE DEFENDANT: Well, it -- it was like almost 40 a
4 week. Like I remember working like 12 days straight. It just
09:39 5 depended, because we kept losing people, but, yeah, like almost
6 40.

7 THE COURT: All right. Anything more you want to
8 say?

9 THE DEFENDANT: No, sir.

09:39 10 THE COURT: So what are you going to do when you go
11 back to New Town after you serve this sentence?

12 THE DEFENDANT: I don't know if I'm going to start
13 working or going -- go to school maybe. I don't know. I'll
14 probably just try and get a job.

09:40 15 THE COURT: Doing what?

16 THE DEFENDANT: I don't know yet. I mean, I got like
17 a long time to think about it. I don't know, just something --
18 maybe maintenance, or something.

19 THE COURT: Why don't you go back to school and give
09:40 20 yourself some more opportunities in life in terms of work?

21 THE DEFENDANT: Yeah. Yeah, maybe.

22 THE COURT: How'd you do in high school?

23 THE DEFENDANT: Did all right.

24 THE COURT: What does that mean? Some people think
09:40 25 "all right" is getting Cs and Ds. Some people think "all

1 right" is getting As and Bs. What do you think "all right" is?

2 THE DEFENDANT: Graduating.

3 THE COURT: Graduating?

4 THE DEFENDANT: Yeah. I didn't do the best, no.

09:40

5 THE COURT: What kind of grades did you get?

6 THE DEFENDANT: Like Cs.

7 THE COURT: All you got to do is wake up and go to
8 class to get a C in high school.

9 THE DEFENDANT: Yeah, but I did get -- I do got --

09:41

10 like I'm a certified carpenter. I went to college for a bit.

11 THE COURT: Okay.

12 THE DEFENDANT: Yeah. I don't know.

13 THE COURT: Well, I hope that you would. I mean --

14 THE DEFENDANT: I graduated college and --

09:41

15 THE COURT: -- you wake up and go to class in college
16 and study a little bit, you can get Bs and Cs quite easy. It's
17 not --

18 THE DEFENDANT: I got As. I don't know.

19 THE COURT: All right. And who's here in the
20 courtroom on your behalf today?

09:41

21 THE DEFENDANT: My mom and my grandma -- my grandmas
22 and my little sister.

23 THE COURT: They all live in New Town?

24 THE DEFENDANT: My -- one of my grandmas do and my
25 mom and my little sister, and then one of them lives in

09:41

1 Minneapolis.

2 THE COURT: Okay. Anything else you want to say?
3 Any questions that you have?

4 THE DEFENDANT: No, Your Honor.

09:41

5 THE COURT: All right. Anything else either attorney
6 wants to say?

7 MR. O'KONEK: No, Your Honor.

8 MR. BELLMORE: No, Your Honor.

09:42

9 THE COURT: So I have reviewed the Presentence
10 Investigation Report. I accept all of the facts contained in
11 that -- contained in that report and incorporate the sentencing
12 guideline calculations into my judgment. The Presentence
13 Report established an overall offense level of 17 and a
14 criminal history category of III, with an advisory guideline
15 range of 30 to 37 months. Neither party has requested any
16 departures or variances from that.

09:42

17 And this is a binding Plea Agreement that the Court
18 has accepted, so other than giving -- or considering time spent
19 in a residential re-entry center to reduce the sentence,
20 nothing else is permitted, and I refer specifically to
21 paragraph 17 of the Presentence Investigation Report.

09:42

22 The Release Status Report from September 3, 2019,
23 which is Document Number 27, reveals that the defendant had not
24 met the conditions of release at that time. It discloses that
25 he was released to Centre, Inc., on July 15, 2019. He was

09:43

1 referred to substance abuse evaluation at West Central Human
2 Service Center, at which time he told the evaluator he did not
3 want treatment, so the evaluation was ended without a
4 recommendation.

09:43

5 The defendant then agreed to have another evaluation
6 and was subsequently placed at the Contemplation Group at West
7 Central Human Service Center.

09:43

8 During the early stages of his stint at Centre, Inc.,
9 he was terminated from his employment at Culver's Restaurant.
10 I'm not sure how anybody gets terminated at Culver's, but he
11 did, and he obtained part-time employment at Burger King in
12 Mandan. The Release Status Report reveals that when he was
13 directed by his case manager to find a second source of
14 employment, he started laughing and said, "No, dude, I'm just
15 chilling." And he failed to attend treatment on September 2,
16 2019.

09:44

17 we had a change of plea hearing on September 3, 2019,
18 and it sounds like Mr. Vocu turned things around after that and
19 is working without incident at Burger King. And there's no
20 write-ups at Centre, Inc., that I've been made aware of, so,
21 fortunately, he saw the light, I guess, after the change of
22 plea hearing, so I will give him credit from the date of the
23 change of plea hearing, September 3, 2019, for time that he
24 spent at Centre, Inc., which is three months.

09:44

09:45

25 But I'm not going to give credit for time spent

1 before that, which is not really indicative of somebody that's
2 fully compliant with the conditions there and complying with
3 all of the requests of the United States Probation Office.

09:45 4 So it will be my judgment, Mr. Vocu, that you shall
5 be committed to the custody of the Bureau of Prisons to be
6 imprisoned for a period of 27 months, thereafter placed on
7 supervised release for a period of three years. I'm ordering
8 that you pay a special assessment of \$100. I'm not imposing a
9 fine.

09:45 10 I'll keep restitution open for 90 days, and then I'll
11 carefully consider any request, if there is one by that
12 timeframe. And you, Mr. Bellmore and Mr. Vocu, will have an
13 opportunity to voice any objections to any request for
14 restitution if there's such a request made within that
09:45 15 timeframe.

16 In terms of the conditions of supervised release that
17 you're required to comply with after your release from the
18 custody of the Bureau of Prisons, those will be outlined in a
19 judgment that I'll sign today. I'll probably sign that before
09:46 20 the noon hour here.

21 As soon as I sign the judgment, which is the final
22 paperwork, it gets electronically filed, and you'll get a copy
23 of that judgment. It will list all of the conditions of
24 supervised release.

09:46 25 And when you're released from the custody of the

09:46 1 Bureau of Prisons, you'll be assigned a probation officer that
2 you'll have to check in with periodically, and that probation
3 officer will sit down with you and review all of these
4 conditions as well, so if you forget some, you need not be
5 concerned about it. They'll be reviewed with you both in
6 person and you'll receive a written copy of the conditions as
7 well.

09:47 8 But everybody that's been sentenced in a federal
9 criminal case that's on any form of supervision has to, first
10 of all, comply with what are known as the standard conditions
11 of supervised release. They are ordered for everyone in this
12 country on federal paper of any sort.

09:47 13 The standard conditions require that you live a
14 law-abiding lifestyle. If you violate any laws while you're on
15 supervised release for three years, whether they're federal,
16 state, local laws or tribal laws, you've put yourself in a
17 position where you're -- have chosen to violate the conditions
18 of supervision.

09:47 19 Standard conditions prohibit you from using street
20 drugs of any sort. Standard conditions prohibit you from even
21 associating with people that use street drugs. You are
22 prohibited from associating with persons that have felony
23 convictions on their record.

09:48 24 You are prohibited for the rest of your life from
25 ever possessing firearms or ammunition. Were you aware of that

1 prohibition?

2 THE DEFENDANT: Oh, yes.

3 THE COURT: Okay. And you'll have to check in with
4 your probation officer as frequently as they require it of you.
09:48 5 If you don't check in, that's usually a sign that there's
6 problems, trouble going on, and you'll find yourself back here
7 in court.

8 Special conditions are also conditions that you're
9 required to comply with, and they include the following: You
09:48 10 must totally abstain from using alcohol, street drugs,
11 inhalants and synthetic drugs while on supervision. Abstain
12 means shall not use. You must participate in any form of drug
13 or alcohol treatment recommended by the United States Probation
14 Office.

09:48 15 You'll be required to submit to random drug and
16 alcohol screening or testing at the discretion of the United
17 States Probation Office. If you do not show up for a drug
18 test, that's considered to be a violation. If there's any
19 evidence that you've tried to tamper with a drug or alcohol
09:49 20 test in any way, that's also considered to be a violation of
21 this condition.

22 You are -- you must not knowingly enter any bar or
23 other establishment where alcohol is the primary item of sale
24 while on supervision.

09:49 25 You must participate in any form of counseling or

1 treatment recommended by the United States Probation Office.
2 It could include, but it is not necessarily limited to mental
3 health treatment and counseling, attending classes, programming
4 of any sort recommended.

09:49

5 Another special condition is that you'll be -- you
6 can be placed, I should say, in a halfway house at any time
7 while you're on supervision, and if you're placed in a halfway
8 house, you're required to follow their rules and regulations.
9 So you've been in a halfway house. You know how that system
10 works.

09:50

11 As a part of the Bureau of Prisons' policies, if
12 you're on good behavior, which I'm sure you will be while in
13 custody, you're allowed to be released after you've served
14 85 percent of your sentence. Eighty-five percent of a 27-month
15 sentence, according to my math, is about 22 months.

09:50

16 And if you're on good behavior while you're in the
17 custody of the Bureau of Prisons, they usually allow people to
18 serve up to the last year of their sentence in a halfway house
19 with work release privileges, treatment opportunities,
20 opportunities to attend school, so there's a benefit to staying
21 on good behavior.

09:50

22 And the last condition of supervised release is that
23 you'll be subject to being searched while you're on
24 supervision, as is everybody else in this country that's
25 sentenced in a federal criminal case. You're subject to a

09:51

1 search clause, which means you can be searched any time, any
2 place by a federal probation officer.

09:51 3 They don't need search warrants and they don't need
4 Court orders to search you or any place that you're living or
5 visiting or search any place that you may be working or motor
6 vehicles that you're traveling in. They don't need search
7 warrants to search cell phones or computers or computer
8 devices.

09:51 9 Essentially everything you own or have access to can
10 be searched by the United States probation officer any time,
11 any place. They may never do that in your case, but they have
12 a right to do it.

09:52 13 None of these conditions that I've ordered are out of
14 the ordinary. They've all been challenged by other defendants
15 over the years. To the best of my knowledge, none of these
16 conditions have ever been found to be unreasonable, but do you
17 have any questions about any of the conditions of supervision?

18 THE DEFENDANT: No, sir.

09:52 19 THE COURT: Finally, I need to inform you that you do
20 have a right to appeal if you feel you haven't been treated
21 fairly. Every defendant can appeal after they've been
22 sentenced.

09:52 23 The time period for any defendant to appeal their
24 sentence is extremely short in the federal system. As a
25 defendant you only have 14 days to appeal, and that starts to

1 run today. So if you wish to appeal, all you need to do is
2 talk to Mr. Bellmore, and he can take care of filing any
3 necessary paperwork to protect your appeal rights. Do you feel
4 that you understand that?

09:53 5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: You did sign a Plea Agreement in this
7 case, and in the Plea Agreement, which we reviewed in detail at
8 the change of plea hearing, you expressly agreed to give up all
9 of your rights of appeal in exchange for a sentence in
10 accordance with the Plea Agreement.

11 And I actually sentenced you three months below the
12 low end of the guidelines. I have never seen a sentence
13 overturned that fell within the guidelines or fell below the
14 guidelines, but that doesn't mean you can't appeal. I just
15 don't think it would get anywhere when you signed a Plea
16 Agreement and agreed not to appeal, but do you feel that you
17 understand when you would need to appeal what I've ordered here
18 today?

09:53 19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Okay. I will recommend to the Bureau of
21 Prisons that they place you in a low-security facility. You
22 mentioned Sandstone, Minnesota, Mr. Bellmore, but does that
23 mean that you don't want me to recommend Duluth or Yankton,
24 South Dakota, or --

09:54 25 MR. BELLMORE: Your Honor, I would -- yeah, if the

1 Court would do that, I would appreciate that. We'd ask that
2 the Court include the camps located in Duluth, Minnesota, and
3 Yankton, South Dakota, as well.

09:54 4 THE COURT: Okay. So those are all low-security,
5 prison-camp type facilities that I would guess that you'd
6 probably end up in. But is that acceptable to you, for me to
7 recommend that, or do you want me to recommend something
8 different?

9 THE DEFENDANT: No, that's cool, Your Honor.

09:54 10 THE COURT: All right. So I hope that you can stay
11 out of trouble the rest of your life, Mr. Vocu. You've been in
12 federal court twice now as a 23-year-old. That's more than
13 most 23-year-olds ever step foot in a federal courtroom. I
14 hope that you don't -- that you make better choices the rest of
09:55 15 your life, and this was a rather mindless, senseless criminal
16 act.

17 But either counsel have any objections to what's been
18 ordered here?

19 MR. O'KONEK: No, Your Honor.

09:55 20 MR. BELLMORE: No, Your Honor.

21 THE COURT: And, Mr. O'Konek, you don't have an issue
22 with the sentence below the binding Plea Agreement?

23 MR. O'KONEK: No, Your Honor.

24 THE COURT: And, Mr. Bellmore, you had no objections?

09:55 25 MR. BELLMORE: No objections, Your Honor.

1 THE COURT: Okay. So, Mr. Vocu, I'll remand you to
2 the custody of the U.S. marshals.

3 I want to thank Ms. Hartman for being here today and
4 for testifying and reading the letter that she had sent. It's
5 not easy to come to federal court to testify at a sentencing
6 hearing like this, and I appreciate your willingness to do so
7 and to be here today.

8 with that, we will stand adjourned.

9 (Proceedings concluded at 9:56 a.m., the same day.)

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CERTIFICATE OF COURT REPORTER

I, Sandra E. Ehrmantraut, a Certified Realtime Reporter,

DO HEREBY CERTIFY that I recorded in shorthand the foregoing proceedings had and made of record at the time and place hereinbefore indicated.

I DO HEREBY FURTHER CERTIFY that the foregoing typewritten pages contain an accurate transcript of my shorthand notes then and there taken.

Dated: May 1, 2020

/s/ Sandra E. Ehrmantraut
Certified Realtime Reporter